DE 03-193

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Approval of Retail Energy Service Program

Order Approving Petition

O R D E R N O. 24,240

November 21, 2003

APPEARANCES: Robert A. Bersak, Esq. for Public Service Company of New Hampshire; Michael S. Giaimo, Esq. for Business and Industry Association of New Hampshire; Office of Consumer Advocate by F. Anne Ross, Esq. on behalf of residential ratepayers; and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On October 9, 2003, Public Service Company of New Hampshire (PSNH) filed a petition with the New Hampshire Public Utilities Commission (Commission) for approval of its proposed Retail Energy Services Program (RES), a program designed to stimulate the migration of certain large commercial and industrial customers from PSNH's energy service to electricity purchased from competitive suppliers. Joining PSNH as petitioners were the Office of Consumer Advocate (OCA), the Business and Industry Association of New Hampshire (BIA), Freedom Partners, LLC (Freedom), and Competitive Energy Services, LLC (CES). Appended to the petition was the supporting pre-filed direct testimony of Stephen R. Hall, PSNH's rate and regulatory services manager, and Kenneth E. Traum, the

OCA's finance director. Also appended was a supporting statement from the BIA. Included with the filing was a proposed tariff, to be effective on February 1, 2004.

The Commission entered an Order of Notice on October 13, 2003, scheduling a Pre-Hearing Conference for October 29, 2003. Unitil Energy Systems, Inc. submitted a timely motion to intervene. The Unitil filing made clear that it did not intend to participate actively in the proceeding but was seeking permission "to file comments if necessary, and to receive copies of pleadings, testimony and exhibits filed by the parties." Granite State Electric Company made a similar filing, although it did not style the request as a petition for intervention.

The Pre-Hearing Conference took place as scheduled on October 29, 2003. No party appeared in opposition to the PSNH petition. Accordingly, the parties and Staff requested that the Commission allow Messrs. Hall and Traum to take the stand for cross-examination and thereafter to take the merits of the case under advisement. The Commission granted this request, subject to an opportunity for Staff to submit a formal recommendation to the Commission. Messrs. Hall and Traum testified, as did Richard Labreque of PSNH.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire, Business and Industry Association of New Hampshire, Freedom Partners, LLC, Competitive Energy Services, LLC and Office of Consumer Advocate

According to PSNH, the Retail Energy Service (RES) Program would, if approved, be a plan of limited duration and size designed to create an incentive for large commercial and industrial customers to obtain energy from the competitive market in lieu of the Transition Service PSNH makes available pursuant to RSA 374-F, the Electric Industry Restructuring Act,[1] and in light of the fact that PSNH may not divest its non-nuclear generation assets prior to April 2006, pursuant to RSA 369-B:3-a. According to PSNH, eligible customers opting for the RES Program would be entitled to receive a monetary credit per kilowatt-hour of consumption that would be used to partially offset their cost of acquiring energy from a competitive supplier. The Program is designed to be revenue-neutral to PSNH and, thus, to have little or no rate impacts on PSNH customers continuing to take Transition Service from PSNH.

Mr. Hall testified that the RES Program is designed to take advantage of the fact that the average cost of providing Transition Service is lower than the average cost of such energy

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[1] The applicable provision of the Restructuring Act, RSA 374-F:2, V, provides that Transition Service is "electricity supply that is available to existing retail customers prior to each customer's first choice of a competitive electricity supplier and to others, as deemed appropriate by the Commission."

on the regional wholesale market. This is because PSNH’s retained generation assets operate at a relatively low cost. According to Mr. Hall, in these circumstances reduced customer purchases of Transition Service energy result in savings to PSNH that exceed the loss in Transition Service revenue, thus reducing PSNH’s average cost of providing Transition Service. Mr. Hall explained that this happens because such migration reduces PSNH’s need to make incremental purchases in the wholesale market at the spot price (or, at certain times, increases PSNH’s ability to sell surplus wholesale energy at the spot price), allowing PSNH to avoid a high marginal energy cost.

PSNH proposes to make the RES Program available on February 1, 2004, to all customers served under PSNH’s Large General Service Rate LG (whose demands are 1,000 kilowatts or greater) as well as customers with multiple locations served under Primary General Service Rate GV, provided that each location of an individual customer served under Rate GV has a demand of at least 300 kilowatts and the total amount of the customer’s participating load is at least 1,000 kilowatts. The Program would be limited to the first 100 megawatts of load enrolled, though PSNH would have authority to increase the participating load by 25 megawatts at PSNH’s sole discretion, with the possibility of additional increases with the agreement of the Commission Staff and the OCA.

The proposal calls for an initial term of two years for the program. PSNH proposes to evaluate the effectiveness of the program during the initial term, and decide whether to terminate the program, modify it or extend its term.

The heart of the program is a per-kilowatt-hour credit to participating customers, applied to their bill for Delivery Service. The credit would be equal to the difference between PSNH's forecasted market cost of the power in each month and the per-kilowatt-hour price of Transition Service, less 0.1 cents per kilowatt-hour.[2] PSNH proposes to calculate the monthly credits every six months and post them on its web site in an

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[2] Specifically, Mr. Hall provides this description of how PSNH will calculate the monthly credit:

> PSNH will utilize Natsource postings (the average of the bid and ask prices) at the New Hampshire zone to determine forward price curves for a prospective six month period (either February through July or August through January). If the Natsource postings do not contain sufficient data, other sources of data will be used. The forward price curves will then be translated into hourly prices by using the prior year's unitized price shapes. Such hourly price shapes will then be translated into monthly energy prices using load shapes for the Rate LG class. UCap costs will also be determined using Natsource data, and capacity costs will be translated into cents per kilowatt-hour using the Rate LG class load factor. Operating reserves and other expenses will be estimated from the most recent three months of data. All of these costs will be summed and adjusted for losses between the transmission level and the meter. PSNH will then calculate the difference between each monthly energy cost amount and the Transition Energy Service rate, and subtract 0.1 cents per kilowatt-hour from each monthly difference. Hall Prefiled Testimony at 6.

Natsource is a wholesale energy broker. "UCap," "capacity costs" and "operating reserves" refer to non-energy components of what a supplier is obligated to purchase at wholesale in New England in order to provide retail energy to customers.

effort to provide customers and suppliers with the information necessary to decide whether to participate.

According to Mr. Hall, the 0.1 cent reduction in the credit is to provide a safety margin if the actual cost of energy is lower than what was forecasted. PSNH proposes that it be granted authority to reduce the reduction by up to 0.05 cents per kilowatt-hour with the agreement of the Commission Staff and OCA.

Mr. Hall addressed the possibility that the cost of energy to PSNH in a particular month is less than its Transition Service rate. According to Mr. Hall, in such a month the credit would be negative or, that is, a surcharge would apply. Mr. Hall testified that a surcharge would "ensure that non-participating customers do not incur higher energy costs for a particular month."

For purposes of stranded cost reconciliation, PSNH proposes to treat the monthly credits as an increase to its energy expense. In a month where the credit was negative and a surcharge applied, there would be a corresponding decrease to energy expense. According to Mr. Hall, "[t]he rationale for such treatment is that if the customer did not select a [competitive] supplier, PSNH would have incurred the energy expense to serve the customer's load." Hall Prefiled Testimony at 7, 8. Mr. Hall noted that when a customer selects a competitive supplier under the RES Program, PSNH will avoid the energy expense but will also receive less revenue because the customer will no longer be paying for Transition Service. According to Mr. Hall, "by treating the credit as an energy expense, other customers are essentially indifferent to the transaction." Hall Prefiled Testimony at 8.

PSNH proposes an initial limit of 100 megawatts in order to cap the risk incurred by non-migrating PSNH customers. According to Mr. Hall, "[i]f there is a dramatic downward shift in the market after the monthly credits have been established, other customers could face higher stranded costs as a result of the program." Hall Prefiled Testimony at 8. But Mr. Hall further noted that "those higher costs would be offset by the fact that there would be a reduction to stranded costs due to lower market prices, moderating any negative impact caused by the existence of the program." Hall Prefiled Testimony at 8. PSNH notes that a further risk-limiting measure would be the practice of calculating the credits for six months as opposed to a year or longer. PSNH contends that any market shift in a particular six-month period would likely be reflected in the monthly credits calculated for the ensuing six months. PSNH also points to a third safeguard: participating customers must stay with the RES Program for a minimum of six months and if they leave they must wait at least six months before returning to it. This, according to Mr. Hall, prevents “gaming” by customers.[3]

B. Office of Consumer Advocate

OCA endorsed the PSNH proposal as an effort to comply with the legislative objective of developing a vibrant competitive market for the provision of retail energy without harming those customers who continue to buy energy from PSNH. *See, e.g.*, RSA 374-F:1 (“The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets.”) According to Mr. Traum, “[o]ver the last few years minimal development of this market has occurred” and “[s]omething must be done to jumpstart the market.” Traum Prefiled Testimony at 1.

[3] The tariff filed by PSNH contains a related provision not specifically highlighted by Mr. Hall in his pre-filed testimony. The tariff recites that if PSNH’s Transition Service rate changes after the monthly credits have been calculated, the credit associated with the RES Program will be adjusted accordingly. In that situation, pursuant to the tariff, participating customers may leave the RES Program without having completed the requisite six months – but the customer would thereafter be ineligible for the RES Program for 12 months. Messrs. Hall and Traum gave an account of this provision that appears to be inconsistent with the tariff language, *see* Tt. at 49-50.

OCA conceded that the RES Program will not provide immediate benefits to residential or small commercial customers. But, according to Mr. Traum, "[o]nce competitive suppliers get their foot solidly in the door in New Hampshire, it will be easier for them to expand their offerings to smaller customers than starting from scratch." Traum Prefiled Testimony at 2. OCA indicated that it is satisfied with the provisions in the program designed to protect non-migrating customers.

C. Business and Industry Association of New Hampshire

According to its supporting statement, the BIA supports the RES Program, believing the Program will help stimulate the competitive market in a manner consistent with the applicable statutes. In the view of the BIA, "[w]hat makes RES impressive is that it is a good faith effort at stimulating the competitive market by a diverse group, consisting of parties that traditionally do not come to consensus on energy issues." Supporting Statement of BIA at 2.

The BIA pointed out that as a practical reality, there currently is no competition in the PSNH service territory. Because PSNH is obligated to sell Transition Service energy at its actual cost of providing such service, *see* RSA 369-B:3, IV(b)(1), which is currently below the wholesale market price, competitive suppliers have been unable to attract commercial and industrial customers in PSNH's service territory, according to the BIA. In the opinion of the BIA, the RES Program will stimulate competition by significantly increasing the proclivity of customers to migrate to non-PSNH sources of energy.

The BIA further advised that some of its members have discussed forming an "aggregation pool" with an eye toward utilizing the RES Program. According to the BIA, the fact that businesses among its members are considering such a move "shows that the RES program is a good thing, and a great next step towards competition." Supporting Statement of BIA at 5. In the opinion of the BIA, "[a]t the very minimum, this program will increase the knowledge of consumers relative to competition." Supporting Statement of BIA at 5.

D. Freedom Partners, LLC

In its letter filed with the Commission, Freedom noted that it approached PSNH to ask if it would consider implementing a program of this type. Beyond supporting the proposal and indicating the view that all PSNH customers will benefit from it, Freedom commented that "PSNH deserves recognition for its openness and willingness to actively explore new and different ways to harness the efficiency of competitive markets to ultimately lower rates to its customers." Letter of Freedom Partners, LLC dated October 26, 2003.

E. Competitive Energy Services

In its letter, CES noted that it established a New Hampshire affiliate (Competitive Energy Services – New Hampshire, LLC) more than two years ago. It became a registered electricity broker in New Hampshire, in anticipation of the advent of retail competition in the energy market. CES indicated its support for the RES Program based on the view that the proposal is consistent with applicable state law and would enhance the opportunity for certain customers to purchase electricity through the competitive market. Letter of Competitive Energy Services dated October 14, 2003. CES believes, based on preliminary discussions with certain PSNH customers that would qualify for the RES Program, that there is "renewed interest" in obtaining competitive energy in New Hampshire.

F. Staff

Staff indicated its support of the PSNH proposal at hearing and followed up with a written report. Staff noted that it participated in the meetings convened by PSNH to develop the RES Program.

Staff noted PSNH's commitment to consult with Staff and OCA with regard to program monitoring and possible changes. Staff's expectation is that such determinations would not be made on a unilateral basis by PSNH but, rather, would be made in consultation with Staff and the OCA. Staff recommended that PSNH be required to file quarterly reports, with monthly detail, indicating the number of participating customers, the amount of participating load and the total credits applied. Staff further suggested that PSNH be required to submit its calculations supporting the determination of the credits for each six-month period. According to Staff, such information would be useful not only in evaluating the progress of the RES Program but also in future Transition Service and Stranded Cost Recovery Charge reconciliation proceedings. Finally, to facilitate paper reduction, Staff further recommended that PSNH be authorized to file all such reports electronically rather than on paper.

III. COMMISSION ANALYSIS

First, we will grant the Petition to Intervene filed by Unitil Energy Systems, Inc., as well as the request to participate filed by Granite State Electric Company.

The Restructuring Act authorizes the Commission "to order such charges and other service provisions and to take such other actions that are necessary to implement restructuring and that are substantially consistent with the principles established in [the Act]." RSA 374-F:4, VIII. This is a reference to the "interdependent policy principles" mentioned at RSA 374-F:1, III and enumerated at RSA 374-F:3.

There are 15 such principles, several of which are relevant here: "customer choice," i.e., "[a]llowing customers to choose among electricity suppliers" because this "will help ensure fully competitive and innovative markets," RSA 374-F:2, II; the objective of assuring that restructuring is "implemented in a manner that benefits all consumers equitably and does not benefit one customer class to the detriment of another," *id.* at VI; the objective of "lower prices for all customers than would have been paid" under the previous regulatory paradigm, id. at XI ("near term rate relief"); and the requirement that utilities "take all reasonable measures to mitigate stranded costs, *id.* at XII(d).

In addition to the requirement that the Commission act in a manner consistent with these policy principles, the PSNH filing implicates our general ratemaking authority as set forth in RSA 378. We are obligated to approve only rates that are "just and reasonable." RSA 378:7.[4]

The facts adduced at hearing amply demonstrate that the proposed Retail Energy Service Program described in the tariff filed by PSNH merit approval as consistent with the policy principles described above and yielding rates that are

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[4] Normally, when a utility files a tariff with the Commission that would have the effect of changing rates, 30 days' notice is required pursuant to RSA 378:3 and the Commission may suspend the new rate schedule pursuant to RSA 378:6. Here, PSNH gave more than 30 days' notice and no suspension was necessary given the proposed effective date of February 1, 2004.

just and reasonable. It is undisputed that competition, a desired objective under the Restructuring Act given its downward pressure on rates, is presently not meaningfully existent within the PSNH service territory. It is further undisputed that what is proposed here – essentially what has often been referred to as a shopping credit – is likely to allow non-utility suppliers to market energy successfully to the eligible PSNH customers. Finally, and perhaps most significantly, we agree with Mr. Hall that the Program is designed in a manner that is likely, even in a worst-case scenario, to result in little or no harm (in the form of increases to PSNH's stranded cost charge)[5] to customers remaining on Transition Service.

The scope of the program is appropriately limited, at least at the outset when it can fairly be described as experimental. The PSNH witnesses noted that 100 megawatts comprise approximately 6-7 percent of PSNH's Transition Service load. On the other hand, these same witnesses noted that 100 megawatts amount to a third or more of the load associated with PSNH's large commercial and industrial customers. Given that it is generally acknowledged that these customers are those most likely to be able to take advantage of retail competition in the electric market, the RES Program represents a significant

[5] Pursuant to RSA 369-B:3 and the Agreement to Settle PSNH Restructuring previously approved by the Commission, any under-recovery (or over-recovery) attributable to PSNH's Transition Service rate results in a corresponding adjustment to PSNH's Stranded Cost Recovery Charge.

marketing opportunity to competitive suppliers that have asserted (in previous PSNH Transition Service proceedings) that they face effectively insurmountable barriers to entry.

We note for the sake of clarity that both the testimony here and the applicable provisions of the Restructuring Act, *see* RSA 374-F:2, I-a and V; *see also* RSA 374-F:3, (c) and (d), require that any customer leaving Transition Service, participating in the RES Program and thereafter returning to PSNH for its energy needs would be eligible for Default Service but would no longer be eligible for Transition Service. At present, PSNH prices its Default Service at the same rate as its Transition Service, but nothing requires such treatment in the future.

The only provision with which we take issue is the expectation that the RES Program could be increased by agreement of PSNH, the OCA, and Commission Staff. We welcome consensus building and would consider seriously any changes to the program that were jointly proposed by PSNH, OCA and Staff. We can not, however, delegate our authority to determine whether a modified program is in the public interest and results in just and reasonable rates.

We will impose additional requirements not proposed by PSNH. We agree with Staff that PSNH should be required to file quarterly reports, with monthly detail, indicating the number of customers participating in the RES program, the amount of participating load and the total credits applied. We adopt Staff's additional suggestion that PSNH be required to submit its calculations supporting the determination of the credits for each six-month period. We agree that, given the experimental nature of the Program, it is appropriate to authorize PSNH to file all such reports electronically rather than on paper.

Finally, as discussed at hearing, we are concerned about the possibility that some competitive suppliers may not be aware of the opportunity provided to them under the RES Program. Accordingly, we will require PSNH to mail a copy of this order to each registered supplier in New Hampshire.

Based upon the forgoing, it is hereby

ORDERED, that the Petition to Intervene filed by Unitil Energy Systems, Inc., and the request to participate filed by Granite State Electric Company are **GRANTED**; and it is

FURTHER ORDERED, that the Retail Energy Service Program proposed by Public Service Company of New Hampshire, as set forth in the tariff submitted by the Company (Supplement No. 3 to NHPUC No. 2 and Rate ESC, pages 1 through 4) is hereby **APPROVED**, as qualified herein.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 2003.

Thomas B. Getz	Susan S. Geiger	Graham J. Morrison
Chairman	Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary